

CHAPTER 44
DRINKING WATER REVOLVING FUND

567—44.1(455B) Statutory authority. The authority for the Iowa department of natural resources to provide loans to eligible applicants to assist in the construction of drinking water treatment facilities is provided by Iowa Code sections 455B.291 to 455B.299.

567—44.2(455B) Scope of title. The department has jurisdiction over the surface and groundwater of the state to prevent, abate, and control pollution. As a part of that general responsibility, the department and the Iowa finance authority (“authority”) are jointly designated to conduct the administration of the drinking water state revolving fund (DWSRF) loan program to assist in the financing of infrastructure projects pursuant to the Safe Drinking Water Act. A project must comply with this chapter to be eligible for a DWSRF loan. This chapter provides for the background, the general rules of practice for the department’s administration of the program, including the criteria for loan eligibility, and the general project and program administration rules.

567—44.3(455B) Purpose. The DWSRF provides financial assistance to eligible public drinking water supplies for the design and construction of facilities to ensure public health and the provision of safe and adequate drinking water. The program reserves a certain percentage of money each year for administrative purposes, to improve and protect source water quality, and to provide technical assistance to smaller drinking water systems. The program is administered by the Iowa department of natural resources (“department”), with assistance from the authority. The director will coordinate with the authority under the terms of an interagency agreement entered into pursuant to Iowa Code chapter 28E. The department establishes priorities for the use of the DWSRF and publishes them each year in its intended use plan (IUP). Published IUPs may include loan funding applications (capitalization grant applications, submitted by the department to the United States Environmental Protection Agency (EPA) regional administrator) for either single or for multiple years, depending on the department’s preference and resource utilization plans, as long as the fund account or set-aside account remains in operation. The IUP will identify all proposed uses of available funds. All potentially funded projects must be approved by the department before they can be considered for certification to the authority.

The EPA provides capitalization grants for this program to the department. Financial assistance projects must be in conformance with the requirements of the Public Health Service Act (42 U.S.C. 300f et seq.), United States Code, Title XIV, Section 1452, Part E.

567—44.4(455B) Definitions. The following words and terms shall have the following meanings unless the context clearly indicates otherwise:

“*Authority*” means the Iowa finance authority (IFA) as established by Iowa Code chapter 16.

“*Commission*” means the environmental protection commission of the state of Iowa.

“*Conservation easements*” means an interest in land that entitles a person to use the land possessed by another (affirmative easement), or to restrict uses of the land subject to the easement (negative easement). A conservation easement restricts the landowner to uses that are compatible with resource conservation.

“*Contiguous*” means directly adjacent or touching along all or most of one side of a legally defined piece of property. Tracts of land involved in the same operation or water supply and separated only by roads, railroads, or bike trails are deemed contiguous tracts.

“*Department*” means the Iowa department of natural resources (DNR).

“*Director*” means the director of the Iowa department of natural resources.

“*Drinking water state revolving fund (DWSRF)*” means a state-administered fund intended to provide drinking water revolving loans to help finance drinking water infrastructure improvements, source water protection, system technical assistance, and other activities intended to encourage and facilitate public water supply system rule compliance and public health protection established by Iowa Code sections 455B.291 to 455B.299.

“*DWSRF funds*” means the combination of a particular fiscal year’s federal capitalization grant appropriation plus the 20 percent state of Iowa match.

“*Eligible cost*” means the cost of all labor, material, machinery, equipment, loan initiation and loan service fees, design and construction engineering services, legal fees and expenses directly related to the project, capitalized interest during construction of the project, and all other expansion, construction, and rehabilitation of all or part of a project incurred after the date of approval of an intended use plan (IUP) which contains the project on a list of projects which are approved for DWSRF loan assistance.

“*Fiscal year*” means the federal fiscal year starting October 1 and ending September 30.

“*Intended use plan (IUP)*” means a plan identifying the intended uses of funds available for loans in the DWSRF for each fiscal year as described in Section 1452 of the Safe Drinking Water Act.

“*Loan agreement*” means an executed contract between a loan applicant and the director and the authority, confirming the purpose of the loan, the amount and terms of the loan, the schedule of the loan payments and requirements, and any other agreed-upon conditions set forth by the director and the authority.

“*Project priority list*” means the list of projects in priority order that may qualify for DWSRF loan assistance contained in the IUP document prepared pursuant to rule 44.8(455B). The priority list shall identify all projects eligible for funding and the points assigned to each project pursuant to subrule 44.7(8).

“*Public water supply system*” (also referred to as “system” or “water system” or “PWS”) means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes (1) any collection, treatment, storage, and distribution facilities under control of the supplier of water and used primarily in connection with such system, and (2) any collection, including wells, or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water supply system is either a “community water system” or a “noncommunity water system.”

1. “Community water system” means a public water supply system which has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

2. “Noncommunity water system” means a public water supply system that is not a community water system.

“*Significant noncompliance*” means the failure to comply with any national primary drinking water standard as adopted by the state of Iowa according to criteria established by the administrator of the federal Environmental Protection Agency.

“*Viability*” means the technical, financial, and managerial ability to comply with applicable national primary drinking water standards as adopted by the state of Iowa. Viability is the ability of a system to remain in compliance insofar as the requirements of the SDWA.

567—44.5(455B) Set-asides. The Safe Drinking Water Act (SDWA, or “Act”) authorizes set-aside funds to enable states to implement specific requirements of the Act. The amount and use of set-aside money is set each year in the IUP pursuant to rule 44.8(455B) and may be adjusted from year to year based on available funds and priorities as outlined in the IUP. As prescribed in the Act, set-asides will include but are not limited to:

44.5(1) Administration expense set-aside. These set-aside funds are to be used to administer the DWSRF. This includes loan portfolio management, debt issuance, DWSRF program startup and other administrative costs, financial, management, and legal consulting fees, and related support services. This set-aside allows a maximum of 4 percent of the total available federal capitalization grant and state match funds in a particular year.

44.5(2) Small system technical assistance set-aside. These set-aside funds will be used to provide technical assistance to public water supplies serving 10,000 people or fewer. This set-aside allows a maximum of 2 percent of the total available federal capitalization grant and state match funds in a particular year. Applications for third-party technical assistance proposals must be submitted and will be accepted and evaluated pursuant to subrules 44.7(2) through 44.7(8) prior to publication of the IUP in a given year.

44.5(3) Source water protection implementation set-aside. These set-aside funds will be used to delineate and assess source water protection areas, and may be used to establish and implement source water and wellhead protection programs. This set-aside allows a maximum of 15 percent of the total available federal capitalization grant and state match funds in a particular year. Up to 10 percent of the total funds (67 percent of this set-aside) will be used by the department in the first two years of the DWSRF to delineate and assess source water protection areas; some of these funds may be subcontracted to third parties to perform aspects of this work. Source water (quality partnership) petition programs (made by individual or consortiums of public water systems) established under Section 1454 of the SDWA amendments will be eligible for money under this set-aside. Applications for third-party source water petition proposals must be submitted and will be accepted and evaluated pursuant to subrules 44.7(2) through 44.7(8) prior to publication of the IUP in a given year.

44.5(4) State program management set-aside. This set-aside money may be reserved for public water supply supervision programs, to include watershed protection, wellhead protection, operator certification, drinking water information management system development, and viability assessment efforts. This set-aside allows a maximum of 10 percent of the total available federal capitalization grant and state match funds in a particular year, and any additional state funds required to meet EPA, SRF grant requirements.

567—44.6(455B) Eligibility.

44.6(1) The following systems are eligible to receive funds from the DWSRF for health improvements as listed and defined in the Safe Drinking Water Act, as amended in 1996.

- a. Community drinking water systems.
- b. Nonprofit nontransient noncommunity drinking water systems.
- c. Cities and counties that are PWS or can become viable new PWS as a result of this project.
- d. Any other governmental subdivision of the state responsible for a public water supply.

44.6(2) The following systems are ineligible to receive funds from the Iowa drinking water revolving loan fund.

- a. Any loan applicant who has not adopted and implemented satisfactory department-approved water conservation plans and practices, or demonstrated to the department an ongoing effort to adopt and implement such plans and practices within one calendar year from the date of the loan agreement.
- b. Any loan applicant in significant noncompliance with any applicable primary drinking water regulation, unless the project will return the loan applicant to compliance.

c. Any loan applicant lacking viability (applicants whose systems lack technical, financial, and managerial viability to comply with the Act and are nonviable or lack capacity per the definition of the Act), unless the loan applicant commits to undertake appropriate changes in operations, including ownership, management accounting, rates, maintenance, consolidation, alternative sources of water supply, or other procedures if the director determines that such changes are necessary to demonstrate viability.

d. Projects and activities deemed ineligible for participation in the DWSRF program by the U.S. Environmental Protection Agency's February 28, 1997, guidelines, or by the department.

567—44.7(455B) Project point ranking system (project priority list).

44.7(1) The director shall develop and maintain a project priority list of public water systems that have a need for either a new or an upgraded drinking water system (including individual subcomponents). The term "public water system projects" may also include separate segments or phases of a segmented or phased project. The project priority list may include projects which are not ready to proceed (e.g., it may include projects by their nature planned and implemented for a longer term than one year or those unable to be implemented within one calendar year), but letters of intent for such projects must be received by the department for the projects to proceed within five years of the submitted letter of intent, or they shall not receive funding. Projects may be construed as not ready to proceed due to lack of fiscal capability (of either the loan applicant or of the state), due to emergencies experienced by the applicant (or the state), due to failure to complete a loan agreement within one year of a project's being listed on the approved IUP, or due to construction or other scheduling constraints. Projects will continue to be eligible for loan funding when funded for the first year of a multiyear project effort. No project may receive funding for more than five years in succession.

44.7(2) At least once each year, the director will provide notification to eligible water supplies that applications for placement on the project priority list are being accepted by the department. The notice shall include the schedule for submittal of the requirements listed in subrule 44.7(6), in order to be placed on the project priority list.

44.7(3) At least once each year, or more often as necessary, the department may amend the project priority list to add eligible projects. List adjustment can be done to ensure that the department uses at least 15 percent of all funds credited to the DWSRF account to provide loan assistance to systems serving fewer than 10,000 persons (allowable under Section 1452(a)(2) of the Act), to the extent that there are a sufficient number of eligible projects to fund. List adjustment can also be made to maintain the fiscal integrity of the bond fund, pursuant to rule 44.8(455B) and the annual published IUP's short-term and long-term goals.

44.7(4) To be eligible for placement on the project priority list, the water system must have a preliminary engineering study of potential system needs (e.g., a "planning" study) approved by the department, and must submit a written application for placement on the list to the director. The application must include:

- a. A description of the type of project for which financial assistance is being requested,
- b. The amount of financial assistance being requested, and
- c. A proposed project construction schedule.

Application shall be made on a DWSRF application package form provided by the department; the applicant may include additional information in the application. Applicants must reapply each year to be placed on the project priority list. Forms can be obtained from the Environmental Protection Division, Iowa Department of Natural Resources, Drinking Water Section, 401 SW 7th Street, Suite M, Des Moines, Iowa 50309.

44.7(5) Reserved.

44.7(6) Applicants seeking financial assistance for construction must include with their application:

1. A description of the entity's current drinking water supply system, including a discussion of existing and potential problems or failures in the current drinking water system and compliance with state and federal criteria,
2. An estimate of the population and the number of households to be served,
3. Annual operating cost projections for a minimum of five years, if feasible, and historical annual operating costs for a period of the immediate past three years, to include balance sheets and income statements, where applicable,
4. A description of the basis for project design,
5. A description of the financial management system, and a map showing the geographical area that the project is expected to serve,
6. A cost estimate for the selected project must also be included with the submission.

44.7(7) A construction project's priority points shall be the total number of points assigned by the department pursuant to the department's scoring system, delineated in subrule 44.7(8). All projects shall be listed in descending order on the published project priority list according to the number of total priority points assigned each project. When two or more projects have the same priority point total, the project sponsored by a system in the process of consolidation shall receive the higher priority. A private system in the process of forming and becoming a PWS shall have the next highest priority (if the system is determined by U.S. EPA regulations or guidance to be eligible for DWSRF funding), and the entity with the smallest served population shall receive the next highest priority. The most current official census population shall be used for all municipalities which serve only the population within their incorporated boundaries and which apply for these loan funds. For all other municipalities and other community public water supply systems and for nontransient noncommunity systems, population will be counted based on either the actual population verifiable by the department or population as calculated by multiplying by an occupancy factor of 2.5 persons per service connection. New systems will be counted based on either census data, an occupancy factor of 2.5 persons per service connection, an occupancy factor of 2.5 persons per identifiable occupied building, or other means acceptable to the department. Funding shall be offered to the projects with highest rank on the project priority list, subject to the project's readiness to proceed, and shall proceed from highest project downward subject to availability of funds. No project is eligible for more than 50 percent of the total available funds in any single calendar year. No project is eligible for a loan of less than \$20,000. Projects comprising for-profit water systems may make up no more than 5 percent of the particular bond issue in any given year. The commission may adjust these maximum and minimum loan figures in a given year pursuant to the commission's final approval of the fiscal year's IUP. The published project priority list shall also be included in the department's annual intended use plan (IUP), pursuant to rule 44.8(455B). Projects involving a multiyear, staged effort may carry over their original priority point total from the previous year's application providing the project owner reapplies for funding each year.

44.7(8) Eligible public drinking water supply projects shall be scored pursuant to the following priority point scoring system.

IOWA DWSRF PROJECT SCORING SYSTEM

(Multiple attributes within a lettered subcategory are not additive, but points are additive from other subcategories; consolidation/restructuring is an approved option to correct violations or “improve” treatment)

Scoring Criterion	Points
<u>A. Water Quality and Human Health Risk-related Criteria (maximum of 60 points)</u>	
1. Acute MCL violation corrected (fecal coliform, E. coli, nitrate, SWTR including turbidity and Giardia)	60
2. Chronic MCL violation corrected (all nonacute MCLs including heavy metals, SOCs, VOCs)	50
3. Treatment technique requirement correction (Pb/cu corrective measures, CT time corrective measures, disinfectant residual corrective measures)	40
4. Imminent threat from groundwater contamination (from UST site, from CERCLA site, from uncontrolled site)	35
5. Connection of individual residences to PWS to eliminate use of contaminated individual private wells (bacterial, nitrate, or IOC/VOC/SOC well contamination all eligible)	35
6. Intermittent nonacute MCL violation correction (generally defined as more than 4 MCLs of a single contaminant in 3 years)	25
7. Lead or asbestos cement pipe replacement (replace at least 200 feet of pipe)	15
<u>B. Infrastructure and Engineering-related Improvement Criteria (maximum of 35 points)</u>	
1. System redundancy and additional source to meet peak day demand with largest well or intake out of service; plant process rehabilitation (made to ensure redundancy of treatment units to protect against acute or chronic MCL with system’s largest treatment unit out of service); water storage improvements (system reliability enhancement—to increase effective storage to Average Daily Demand, including either at-ground or elevated storage); pumping improvements meeting hydraulic and ten-State Standard requirements for Average Daily Demand.	35
2. Water systems over capacity expansion. Points are allowable only when system is operating at 85% or more of system design capacity. Source, plant, or distribution system improvements for system expansion are all eligible under this category.	30
3. Pressure improvements, including pump upgrades, pipe looping and pressure reduction valves such that average distribution system pressure increases by more than 10 psi in project area.	20
4. Other distribution system enhancement (e.g., valves, fittings, line replacement, hydrants, pumping stations)	20
5. Provision of emergency power/emergency pumping capacity including purchase of diesel generators or installation of automatic switching systems	15
6. Rectify excessive water loss per established water conservation plan (more than 15 percent of water must be unaccounted for to be eligible for points)	10
<u>C. Affordability Criteria (maximum of 10 points)</u>	
1. System serves low-income population (Community Development Block Grant (CDBG) Iowa Department of Economic Development (IDED) Low-Moderate Income Criteria (LMI))	10

D. Special Category Improvements (maximum of 15 points)

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|--|----|
| 1. Wellhead protection (detailed contaminant inventory, contingency plan, conservation easements, and land acquisition) | 15 |
| 2. Source protection (detailed contaminant inventory, contingency plan, conservation easements, and land acquisition) | 15 |
| 3. Water conservation measures/conservation plan preparation insofar as new water conservation ordinances are adopted and enforced | 5 |

E. IDNR Adjustment Factor for Population—use 1 score only

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|---|------------|
| 1. (Project Serves) Population less than 10,000 | 10 |
| TOTAL MAXIMUM POINTS | 130 |

567—44.8(455B) Intended use plan.

44.8(1) Development. The director shall prepare an intended use plan (IUP) each year. The IUP will be submitted to a public hearing and approved by the commission and U.S. EPA.

44.8(2) Contents. The IUP will identify the anticipated uses of loan funds available for that fiscal year and will include:

a. A list of projects from the state project priority list (defined in rule 44.7(455B)) that are eligible for DWSRF loans and any proposed activities eligible for assistance under set-aside authority of the SDWA. The list will include the name of the eligible recipient, applicable PWS permit number, the projected amount of loan assistance, and a schedule of estimated disbursement of funds. The department's list will consider the following in developing the list of eligible recipients for the intended use plan:

- (1) Whether a project will be ready to proceed on a schedule consistent with time requirements for outlay of funds;
 - (2) Whether the project addresses the need upon which the system's priority is based;
 - (3) Applicant's financial capability to service the loan, provide operation and maintenance, and provide replacement and debt service reserves;
 - (4) Applicant's statement of willingness to accept all loan terms and conditions.
- b.* Discussion of the long-term and the short-term goals of the DWSRF.
- c.* Information on the types of activities to be supported by the DWSRF.
- d.* The method by which the IUP may be amended.
- e.* Assurances on how the state intends to meet environmental review requirements of the Act.

567—44.9(455B) Department initial approval of projects.

44.9(1) Project/loan initiation conference. The department may require the loan recipient or the loan recipient's representative to meet at a location designated by the department.

44.9(2) An applicant seeking financial assistance from the state revolving fund for a construction project must provide the following information to the director for review and approval:

- a.* Plans and specifications must be signed by a professional engineer holding current license to practice in Iowa.
- b.* Plans and specifications must be consistent with the project identified in the application submitted pursuant to subrule 44.7(6).
- c.* The planned project must be described in full and the construction requirements necessary to complete the project as proposed must be detailed.
- d.* The project submittal shall include the latest engineering cost estimate for the project.
- e.* The plans and specifications shall comply with all applicable state statutes, rules, and design standards.

f. Those portions of projects not meeting eligibility requirements may be excluded from the funded project, but included in the submitted plans and specifications if the applicant chooses to keep the loan-ineligible part of the project as part of the overall system improvement. Ineligible portions of projects include but are not limited to dams, water rights, monitoring costs, operation and maintenance expenses, projects designed primarily in anticipation of speculative growth, and projects needed primarily for fire protection.

g. The applicant has or will demonstrate the ability to ensure a dedicated source of revenue.

h. The applicant has demonstrated its ability to provide the necessary legal, institutional, managerial, and financial capability to complete the project. Legal, institutional, managerial, and financial capability includes the requirement that the applicant show the ability to collect the amount of money sufficient to repay the DWSRF loan.

44.9(3) An applicant seeking financial assistance from the DWSRF for any project appearing on the project priority list must submit information as required under subrule 44.7(6) on forms provided by and acceptable to the department. Departmental review requirements shall consist of the following:

a. Upon review and approval of construction projects submitted as required under subrule 44.7(6), and the plans and specifications as required under subrule 44.9(2), and following a determination that the project meets the applicable requirements of the Act, federal regulations, Iowa statutes, and relevant portions of this chapter, the director shall approve the project in writing.

b. If there is an alteration (change order) to a project after the director approves the project, the eligible applicant must request in writing from the department an amended approval. The director shall review the request and proposed project alteration (change order) and, upon a determination that the project meets the applicable requirements of the Act, federal regulations or “Drinking Water State Revolving Fund Program Guidelines,” dated February 1997, Iowa statutes, and relevant portions of this chapter, the director shall approve the project as amended.

c. The director shall inform the applicant in writing of the reason for loan denial and return any application not in substantial compliance with these rules.

567—44.10 Reserved.

567—44.11(455B) Certification of the project to the authority.

44.11(1) Upon approval of a project pursuant to rules 44.7(455B) and 44.9(455B) and certification that the project is listed on the department’s project priority list for the current year, the director shall certify the project to the authority for review and consideration for loan eligibility.

44.11(2) Systems without a certified operator shall not receive loan assistance. Before the financial assistance recipient submits its 50 percent payment loan disbursement request to the authority (with copy to the department), it must submit to the department the name, certification number and certification expiration date of the operator certified, pursuant to 567—Chapter 81, to be directly responsible (in direct responsible charge) for the operation of the facility.

567—44.12(455B) General administrative requirements.

44.12(1) Loan agreement conditions. The director, in coordination with the authority, will prepare a loan agreement when the application has been determined to be in compliance with the requirements of the SDWA and applicable state rules for DWSRF funding. The loan agreements to be executed by the applicant and the department shall be a binding obligation under Iowa law, shall include conditions and terms to be effective for the loan period, and shall be accompanied by evidence of such security, legality, and enforceability as shall be satisfactory to the director. Each borrower’s loan agreement terms may differ due to differences in legal structure and creditworthiness of eligible borrowers. The expected loan agreement terms will be discussed with the applicant at the project initiation conference described in rule 44.9(455B). A copy of the current form of loan agreement shall be provided to the recipient at the time of application.

44.12(2) Allowable costs shall be limited to those costs deemed necessary, reasonable, and directly related to the efficient completion of the project. The director will determine project costs eligible for state assistance in accordance with rule 44.6(455B). Land purchase, easement, or rights-of-way costs are ineligible with the exception of land which is integral to a project that is needed to meet or maintain public health protection, and needed to locate eligible treatment or distribution works. Source water protection easements are considered to be integral to a project. (The acquisition of land or easements has to be from a willing seller.) In addition to those costs identified in this chapter, unallowable costs include the following:

- a. Cost of planning and applying for a DWSRF loan.
- b. Costs of service lines and in-house plumbing.
- c. Administrative costs of the loan recipient.
- d. Vehicles and tools.

44.12(3) The recipients shall maintain adequate records that document all costs associated with the project. Moneys from the DWSRF and those contributed by the recipient shall be accounted for separately. Accounting procedures shall conform with generally accepted government accounting principles, and auditing procedures will be in accordance with the U.S. General Accounting Office (GAO) publication, "Government Auditing Standards," dated June 1994. All records shall be preserved and made available to the department, the authority, the state auditor, and the Office of the Inspector General (OIG) of the EPA for at least three years from the date of the final loan repayment.

44.12(4) The recipient shall provide access at all times for the department, the authority, the state auditor and the OIG at EPA to all project records and documents for inspection and audit purposes for a period of three years from the date of the final loan payment. The same access to the project site(s) shall be provided for inspection purposes.

44.12(5) Other federal and state statutes and programs may affect a DWSRF project. Loan agreements will include an assurance that a recipient will comply with all applicable federal and state requirements. Federal "cross-cutters" which will affect DWSRF projects include 13 environmental authorities, four economic and miscellaneous authorities, and nine social policy authorities. Each of these specific cross-cutters is delineated in Appendix 1. Additions or deletions to this list may be made by the department as needed to comply with applicable EPA regulations and program guidance.

44.12(6) The recipient must submit a construction drawdown schedule to the department prior to the award of contracts.

44.12(7) Loan agreements will be binding commitments based on estimated eligible costs prior to construction. A final adjustment to a loan amount may be made upon completion of construction. Loans will be made to eligible recipients as soon as possible after money is available. The DWSRF will be managed such that contingency money is available in loans to allow for final adjustments in allowable costs as approved by the director. If eligible costs exceed the loan amount, the recipient may request an increase. The director in coordination with the authority will evaluate the request considering available money in the fund as well as the financial risk to determine the appropriate action, including renegotiation of the loan. Should costs be less than the loan amount, the loan shall be adjusted. Any project identified in the intended use plan for funding in a fiscal year that has not signed a binding commitment by August 31 of the next applicable federal fiscal year may be bypassed by projects of a lower priority that are in a state of readiness.

44.12(8) The director shall have the right to terminate any loan when terms of the agreement have been violated or project activities are not progressing in a satisfactory manner. Loans will be terminated if construction has not begun within one year of the execution of a loan agreement. The director in coordination with the authority will establish a repayment schedule for funds already loaned to the recipient. All terminations must be in writing.

567—44.13(455B) Construction phase and postconstruction phase requirements.

44.13(1) The loan recipient must notify the director of the estimated project completion date. A final inspection of the project may be performed by the director to verify that construction is complete (except for weather-related items) and conforms with the approved plans and specifications and all approved change orders.

44.13(2) The department shall undertake measures to discern adequate project performance as follows:

a. Three months after initiation of final operation of the project, the loan recipient must certify to the director that the project is operating as planned and designed. This certification must be made on a form provided by and approved by the department.

b. If the loan recipient is unable to certify the project is operating as planned and designed, the recipient must submit a corrective action report to the director for review and approval. The corrective action report must contain an analysis of the project's failure to operate as designed; a discussion of the nature, scope, and cost of the action needed to correct the failure; and a schedule for completing the corrective work, acceptable to the department.

567—44.14(455B) Loan agreements and repayment policy for loans. Loan agreements shall be entered into for each separate project, with the director and an authorized representative of the applicant signing the agreement. Loans made to recipients shall bear interest at a fixed rate of 3 percent per annum from the date of origination of the loan. The interest rate set at the time of origination of a loan will not change.

Loans shall be for a period of up to 20 years. The length of the loan period will be determined by the department. It shall not be set for a period shorter than five years. Fees for servicing the loans may also be set by the authority. It is the intent of the department to charge a loan initiation fee of 1.0 percent of the amount of the loan, payable on the date the loan agreement is entered. It is the intent of the department to charge an annual loan servicing fee of 0.25 percent of the loan principal, due at the time of each annual loan repayment. The department reserves the right to charge higher credit-based fees to non-governmental recipients (with the exception of nonprofit rural water districts). Loan agreements shall include but shall not be limited to provisions whereby the recipient ensures water system viability will be maintained, ensures compliance with the Act will be maintained, and ensures a certified operator in charge of the system in question will be maintained, all for the length of the loan agreement.

All principal and interest shall be repaid in accordance with the terms and conditions of the executed loan agreement, generally on a level debt service schedule. Adjustments of maturities may be granted to enable a recipient to conform its loan terms to its existing debt obligations, but the average life of the principal installments to be made under the combined repayment schedules shall not be longer than it would be if the total principal amount to be outstanding was repaid on a level debt service basis over the same period. Borrowers must begin repayment of the loan (both principal and interest) no later than one year after completion of construction of the project. The maximum repayment period is 20 years. Principal repayments will start not later than one year after project completion. Principal payments will be made annually and interest payments will be made semiannually on a schedule determined by the director which is consistent with these rules and financing requirements applicable to the DWSRF. Prepayment may not be made within the first ten years of the loan term, other than those repayments resulting from a loan agreement adjustment based on final costs. Exceptions may be made for loans which have deliberately been limited to less than ten years.

The dedicated source of repayment is expected to be the net revenues of the public water supply system, with the loan being secured by a first lien on said net revenues. Loans may rank on a parity basis with other outstanding obligations or, with the approval of the director and the authority, may be subordinate in right of payment to other outstanding revenue obligations of the recipient. Subordinate loans shall be approved only if the net revenues of the system are expected to be at least 105 percent of the amount of the combined maximum annual debt service on the outstanding obligations and subordinate loan. Loans also may be secured by a general obligation of the recipient providing for a levy of debt service taxes to repay the loan. Recipients shall not be required to maintain any debt service reserve fund or improvement fund with respect to their loans.

The recipient shall use the proceeds of the DWSRF loan solely for the purpose of funding the project. Timely disbursement from the loan by the borrower shall be made to contractors.

All costs must be documented to the satisfaction of the director before proceeds can be disbursed. Records shall be maintained in accordance with subrule 44.12(3).

The recipient shall agree to comply with all applicable laws, rules, and regulations of the department, the authority, or other federal, state, and local jurisdictions concerning the financing, construction, operation, maintenance, and use of the water facilities.

567—44.15(455B) Sanctions. Failure of the recipient to repay the loan in accordance with the schedule contained in the loan agreements will result in the loan's being declared in default. Should a loan be declared in default, the director shall take legal action to collect amounts past due. Also, other state agencies will be notified and actions will be taken to preclude the recipient from receiving other grant or financial assistance until such time that all delinquent payments have been recovered.

Failure of a project to conform to approved plans and specifications or failure of a loan recipient to comply with the requirements of 567—Chapters 40 through 44 (pertaining to drinking water supply systems) constitutes grounds for the director to withhold authorization of loan disbursements to the financial assistance recipient. The loan recipient is then responsible for ensuring that the identified problem in either the plans and specifications or the other relevant portion of the project is rectified such that disbursements may be resumed. Once an agreement for correcting the conditions which led to the withholding of funds is reached between the director and the loan recipient, the director shall release the retained funds according to the provisions of the agreement.

567—44.16(455B) Disputes. A person or entity who disagrees with the project rankings, department funding decisions, or the withholding of project funding pursuant to rules 44.7(455B), 44.8(455B), and 44.12(455B) may request a formal review of the action. A request for review must be submitted in writing to the director by the person or entity within 45 days of the date of notification of the final decision made by the department or department staff. A decision by the director in a formal review case may be further appealed to the commission.

567—44.17(455B) Insufficient priority points. Reserved.

567—44.18(455B) Financial need. Reserved.

Appendix 1

Federal Cross-Cutters (Federal laws executive orders, and governmentwide policies that apply by their own terms to projects and activities receiving federal financial assistance, regardless of whether the statute authorizing the assistance makes them specifically applicable).

Environmental Authorities

- Archaeological and Historic Preservation Act of 1974, Pub. L. 86-523, as amended
- Clean Air Act, Pub. L. 84-159, as amended
- Coastal Barrier Resources Act, Pub. L. 97-348
- Coastal Zone Management Act, Pub. L. 92-583, as amended
- Endangered Species Act, Pub. L. 93-205, as amended
- Environmental Justice, Executive Order 12898
- Floodplain Management, Executive Order 11988, as amended by Executive Order 12148
- Protection of Wetlands, Executive Order 11990
- Farmland Protection Policy Act, Pub. L. 97-98
- Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended
- National Historic Preservation Act of 1966, Public Law 89-665, as amended
- Safe Drinking Water Act, Pub. L. 93-523, as amended
- Wild and Scenic Rivers Act, Pub. L. 90-542, as amended

Economic and Miscellaneous Authorities

- Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended, Executive Order 12372
- Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal Contracts, Grants, or Loans
 - Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended
 - Debarment and Suspension, Executive Order 12549

Social Policy Authorities

- Age Discrimination Act of 1975, Pub. L. 94-135
- Title VI of the Civil Rights Act of 1964, Pub. L. 88-352
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act)
 - Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)
 - The Drug-Free Workplace Act of 1988, Pub. L. 100-690 (applies only to the capitalization grant recipient)
 - Equal Employment Opportunity, Executive Order 11246
 - Women's and Minority Business Enterprise, Executive Orders 11625, 12138, and 12432
 - Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590
 - Anti-Lobbying Provisions (40 CFR Part 30) (applies only to capitalization grant recipients)
 - [Filed 12/19/97, Notice 9/10/97—published 1/14/98, effective 2/18/98]
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